



Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0111]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for the International Institute of Towing and Recovery

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew the International Institute of Towing and Recovery's (IITR) exemption to allow commercial motor vehicle (CMV) operators to secure automobiles, light trucks, and vans using a total of four tiedowns – two fixed and two adjustable – instead of two tiedowns, both of which need to be adjustable. The exemption renewal is for 5 years.

DATES: This renewed exemption is effective May 17, 2022, through May 17, 2027.

Comments must be received on or before **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0111 using any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA-2016-0111). Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the **Privacy** heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy: In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676 or by email at MCPSV@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0111), indicate the specific section of this document to which the

comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2016-0111” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) for a 5-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.”

III. Background

IITR has requested a 5-year extension of the current exemption from 49 CFR 393.112 to allow tow truck companies and operators of car-carrier type tow trucks to secure automobiles, light trucks and vans using a total of four tiedowns – two fixed and two adjustable – instead of two tiedowns, both of which need to be adjustable. Copies of

the current exemption application, comments, and the Agency's previous decision can be found in Docket No. FMCSA-2016-0111.

Current Regulatory Requirements

Section 393.112 of the FMCSRs requires that "[e]ach tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them...." Section 393.128 requires that "[a]utomobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns."

Original Exemption

In its original exemption application, IITR noted that the towing industry had adopted a securement method for light vehicles whereby two non-adjustable tiedowns are attached to the rear of disabled vehicle, and then "snugged up or adjusted by using the winch to remove any slack in the chains." Two adjustable chains are used to secure the front of the disabled vehicle to the transport vehicle, and "as the front binder or ratchet is tightened up, it not only tightens up the front tiedown chain but the rear tiedown chain as well." IITR stated that this securement system will prevent any lateral, forward, rearward, and vertical movement of the disabled vehicle, and that the four-point tiedown system exceeds the minimum tiedown requirements specified in the FMCRs.

On May 15, 2017, following notice and comment, FMCSA granted IITR's exemption request for a 5-year period (82 FR 22372). In its decision, FMCSA noted that the current regulatory requirements did not prohibit the use of the four-tiedown system to restrain automobiles, light trucks, and vans. Instead, the regulations require a minimum of two tiedowns, both of which must be adjustable. Six commenters supported, and none opposed, the IITR application.

In granting the exemption, FMCSA agreed with the commenters that the use of a four-point tiedown system consisting of two fixed tiedowns and two adjustable tiedowns would likely provide a level of safety that is equivalent to or greater than a system that uses only two adjustable tiedowns. FMCSA further noted that:

In the configuration described in the application, tensioning of the adjustable tiedowns on one end of the load via binders, ratches, a winch, or the tilt of the vehicle bed will in turn provide a controlled tensioning of the other, fixed tiedowns. The use of the four tiedowns in this manner will provide restraint of the transported vehicle in the lateral, longitudinal and vertical direction as required by section 393.128(b)(1) of the FMCSRs.

Finally, FMCSA noted that in addition to the cargo securement requirements in part 393:

[S]ection 392.9(b)(2) of the FMCSRs requires every driver to inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and make adjustments to the cargo or load securement devices as necessary – including adding more securement devices – to ensure that the cargo cannot shift on or within or fall from the CMV. Further, section 392.9(b)(3) of the FMCSRs requires every driver to reexamine the cargo and its load securement devices during the course of the transportation and make any necessary adjustment whenever (1) the driver makes a change of duty status, (2) the CMV has been driven for 3 hours, or (3) the CMV has been driven for 150 miles, whichever occurs first.

Based on these considerations, FMCSA found that IITR's application had "demonstrated that allowing the use of four tiedowns, two of which are adjustable, to secure automobiles, light trucks and vans will prevent against lateral, forward, rearward, and vertical motion as required by 49 CFR 393.128." Thus, FMCSA concluded that IITR had demonstrated that the configuration maintained a level of safety equivalent to, or greater than, the level of safety achieved without the exemption. In granting the exemption, FMCSA also notified the public that interested parties "possessing information that would demonstrate that motor carriers who use two non-adjustable tiedowns in addition to the two required adjustable tiedowns are not achieving the requisite statutory level of safety should immediately notify FMCSA." During the period the exemption has been in effect, FMCSA has not received any notification that

companies operating under the exemption have failed to achieve the equivalent level of safety.

Application for Renewal of Exemption

In its renewal application, IITR reiterated the previous statements in support of its original exemption request. IITR further noted that the process authorized under the previous exemption is currently used by the industry as the standard method for securing light vehicles being towed and notes that “the practice allows for an efficient four-point cargo system that is more stringent than the two-point minimum system required by 49 CFR 393.128.”

IV. Equivalent Level of Safety Analysis

FMCSA is not aware of any evidence showing that allowing the use of four tiedowns, at least two of which are adjustable, to secure automobiles, light trucks, and vans to prevent against lateral, forward, rearward, and vertical motion as required by 49 CFR 393.128 in accordance with the conditions of the original exemption, has resulted in any degradation in safety. The Agency believes that extending the exemption for a period of five years, on the terms and conditions set forth in this exemption renewal decision, will likely achieve a level of safety that is equivalent to, or greater than the level achieved by a cargo securement system that uses two adjustable tiedowns when the cargo securement system meets all of the aggregate working load limit requirements of 49 CFR 393.106(d).

V. Exemption Renewal Decision

A. Grant of Exemption.

FMCSA provisionally renews the exemption for a period of five years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption as specified in this section. The exemption

from the requirements of 49 CFR 393.112 is otherwise effective from May 17, 2022, through May 17, 2027, 11:59 p.m. EST, unless renewed or terminated earlier.

B. Applicability of Exemption

The exemption is restricted to towing companies and operators of car carrier type tow trucks that transport and are securing automobiles, light trucks, and vans using a total of four tiedowns – two fixed and two adjustable – instead of using a minimum of two tiedowns, both of which need to be adjustable.

C. Terms and Conditions

Drivers operating under the exemption must comply with all other applicable FMCRS (49 CFR 350-399).

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Termination

The exemption will be valid for five years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

Interested parties possessing information that would demonstrate that companies operating under this exemption are not achieving the requisite statutory level of safety

should immediately notify FMCSA. Such information may be reported via email to MCPSV@dot.gov. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

VI. Request for Comments

FMCSA requests public comment from all interested persons on FMCSA's decision to provisionally renew this exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practical. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Robin Hutcheson,

Deputy Administrator.

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